



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

Dorothy Rice
Executive Director
California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

FEB 12 2008

Dear Ms. Rice:

The Environmental Protection Agency (EPA) has reviewed those portions of the amendment to the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) adopted under Resolution No. R2-2006-0052 that revise water quality objectives for mercury in San Francisco Bay. The amendment vacates an existing water quality objective and establishes two site-specific water quality objectives in fish tissue, one to protect human health, and one to protect aquatic organisms and wildlife. I am pleased to inform you we are approving these portions of the amendment, subject to completion of the Endangered Species Act (ESA) section 7(a)(2) consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services).

The California Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted the amendment under Resolution R2-2006-0052 on August 9, 2006. The California State Water Resources Control Board (State Board) approved the amendment on July 17, 2007 under Resolution No. 2007-0045, and the California Office of Administrative Law (OAL) approved the amendment on November 7, 2007. EPA received the State's Record of Adoption and request for approval on September 25, 2007, and the OAL's approval letter on November 9, 2007. The water quality objective revisions in the amendment were adopted in conjunction with a Total Maximum Daily Load (TMDL) for the control of mercury in San Francisco Bay and with an authorizing provision for inclusion of schedules of compliance in National Pollutant Discharge Elimination System (NPDES) permits for mercury. By this letter, EPA is approving the water quality objective revisions within Regional Board Resolution No. R2-2006-0052. We are addressing the TMDL and the authorizing provision for inclusion of schedules of compliance in NPDES permits for mercury in separate correspondence.

The Amendment

Regional Board Resolution No. R2-2006-0052 amends the Basin Plan to vacate the existing aquatic life and human health water column water quality objective of 0.025 ug/l total mercury as a 4-day average, in waters of San Francisco Bay north of the Dumbarton Bridge, and to adopt two new mercury water quality objectives in fish tissue, for all waters of San Francisco Bay. The new objective for the protection of human health is 0.2 milligrams of mercury per kilogram of fish tissue wet weight concentration measured in the edible portion of specific trophic level 3 and trophic level 4 fish, as further defined in the Basin Plan amendment. The new objective for the protection of aquatic organisms and wildlife is 0.03 milligrams of mercury per kilogram of fish tissue wet weight, in whole fish 3 – 5 centimeters in length. Table 3-3B: Marine

Water Quality Objectives for Mercury in San Francisco Bay has been added to Chapter III (Water Quality Objectives) of the Basin Plan to incorporate these objectives in the Basin Plan.

Today's Action

Section 303(c) of the Clean Water Act (CWA) requires EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions that are subject to EPA's approval authority under CWA section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain provisions addressing implementation of water quality standards for surface waters.

EPA has determined that the portions of the above Basin Plan amendment to revise water quality objectives for mercury are subject to EPA's CWA section 303(c) approval authority. Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, EPA hereby approves these changes in water quality objectives, subject to completion of the ESA section 7(a)(2) consultation with the Services on the rescission of the water column objective and the adoption of the aquatic organism and wildlife fish tissue objective. EPA's approval is based on our finding that these portions of the amendment are consistent with the requirements of the CWA and EPA's regulations at 40 CFR 131.5 and 131.6.

Public Participation


EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. We wish to acknowledge the Regional Board staff's thoughtful consideration of the recommendations and comments provided by the U.S. Fish and Wildlife Service, which resulted in the adoption of fish tissue mercury objectives expected to protect both human and wildlife consumers of fish from San Francisco Bay. Based upon our review, we have concluded that the public review procedures followed by the State in the development of Regional Board Resolution No. R2-2006-0052 and State Board Resolution No. 2007-0045 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

ESA Consultation with the Services on EPA's Action

Section 7(a)(2) of the ESA states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species (listed species) or result in the destruction or adverse modification of critical habitat. On January 24, 2008, EPA initiated informal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on our action concerning the revised aquatic organism and wildlife water quality objective. We anticipate concluding consultation in the near future. Consistent with ESA section 7(d), we find that our approval of the revision to the aquatic organism and wildlife water quality objective will not "make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation of implementation of any reasonable and prudent alternative measures which would not violate [ESA section 7] subsection (a)(2)."

EPA commends the San Francisco Regional Board staff for its excellent work on the amendments adopted under Regional Board Resolution No. R2-2006-0052. If there are any questions regarding EPA's action, please contact Diane Fleck of my staff at (415) 972-3480. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

 12 February 2008
Alexis Strauss
Director, Water Division

cc: Bruce H. Wolfe, California Regional Water Quality Control Board,
San Francisco Bay Region
Caroline Whitehead, EPA Office of Water, Mail Code 4301